

**IOWA DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION DIVISION**

POLICY/PROCEDURE STATEMENT

TOPIC: <u>On-site and Off-site Record-Keeping at UST Sites</u>

Policy Procedure Number: 4-e-04

Replaces Number: N/A

Date: August 11, 1998

Effective Date: August 18, 1998

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Supervisors

Approval: Bureau Chief: Michael Murphy *M/M*

Date: *8/18/98*

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Date: *8/21/98*

Applicable Code of Iowa or Iowa Administrative Code Rule:

Iowa Code section 455B.474 authorizes the department to adopt rules pertaining to prevention and detection releases for USTS. Department rules are required to be consistent with EPA adopted rules and no less stringent than EPA rules. see Iowa Code section 455B.474(3) "d" and 455B.474(7).

The department has adopted the EPA tank performance and operational standards rules and EPA record-keeping rules. See 40 CFR 280 et seq. The department record-keeping rules affected by this policy are 567 IAC 135.4(5) (UST records) and 567 IAC 136.20 (financial responsibility records)

Attachments: Federal Register Vol. 52, No. 74., page 127132, 4/17/87; Federal Register Vol. 53, No. 185 pages 37141-35142, 9/23/88.

REASON OR BACKGROUND

Field office inspectors often encounter situations where the owner/operator does not have the required records on site when an unannounced inspection is conducted. In the vast majority of cases, the issue has not been where the records are to be maintained and the availability for inspection but simply the existence or adequacy of the records themselves. However, inspectors have reported several incidents, primarily with one or more of the larger owner/operators, who explicitly take the position that they are not required to maintain records on-site and in fact continue to maintain them at a central corporate office.

Department policy has generally been understood to require on-site maintenance unless the records are kept at an off-site location that is close enough so that the records could be produced at the time of the inspection. The following is a clarification of this policy and practice.

The department is currently conducting inspections without prior notice although some experimentation with prior notice inspections is beginning. It should be understood that if prior notice inspections are conducted, with reasonable notice to the owner/operator, all required records must be available at the time of inspection. Failure to have the records on-site is a violation regardless of the policy that generally allows off-site maintenance.

DETAILS

Department rule 567 IAC 135.4(5) "c" follows essentially verbatim the EPA rule, 40 CFR 280.34 and reads as follows:

c. Availability and maintenance of records. Owners and operators must keep the records required either:

- (1) At the UST site and immediately available for inspection by the department; or*
- (2) At a readily available alternative site and be provided for inspection to the department upon request.*

NOTE: In the case of permanent closure records required under 135.9(5), owners and operators are also provided with the additional alternative of mailing closure records to the department if they cannot be kept at the site or an alternative site as indicated above.

When the EPA initially proposed this rule in April, 1987, the language specifically required that records kept at a "readily available alternative site" be available for inspection within 24 hours of notice. The final rule was revised in the September, 1988 federal register by removing the 24 hour limitation. The discussion in both the 1987 and 1988 preamble clearly indicates the option of off site maintenance while recognizing the need for inspectors to be able to review the records on reasonable notice to determine compliance. EPA's rule intends to give the states and inspectors the discretion to establish a reasonable timeframe to produce records maintained at an off site location. The discussion also makes it clear that when records are maintained off site but within reasonable proximity of the facility, the inspector can require them to be produced at the time of inspection.

The department interpretation of the above rule is that records may be maintained at an off site location. However, the owner/operator must be able to produce the records and make them available to the inspector within two business days of the department request, excluding the day of request. Failure to do so will be deemed a violation.

This policy also recognizes that if records are maintained at an alternative location such that the records could be reasonably produced at the time of inspection, the owner/operator must produce them if requested. Failure to do so will be deemed a violation.

If an owner/operator is given at least two business days in advance of an inspection to make available all required records, it will be deemed a violation if the records are not produced on site at the time of inspection.